IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 945 (S/S) of 2005

(Interim Relief Application No. 1696 of 2006)

Mohd. Vishal S/o Late Sri Mohd. Ali
R/o 42, Azad Colony, Raipur Road,
Dehradun.

…….. Petitioner.

Versus

1. Union of India through it's Secretary, Ministry of Defence, New Delhi.
2. Chief Engineer, Bareilly Zone, Sarvatra Bhawan, Station Road, Bareilly Cantt.- 213001
3. Engineer in Chief's Branch/EIC (4) Army Head Quarters, Kashmir House, New Delhi – 110011.
4. Chief Engineer (EIC 2) Hqrs. Central Command, Lucknow – 2.
5. Commandar Works Engineer/ HQ CWE, Dehradun, Dehradun Cantt.
6. Garrison Engineer, Dehradun Cantt. Dehradun.

..... Respondents

24.02.2006

Sri Pankaj Miglani, learned counsel for the petitioner.
Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Pankaj Miglani, Learned Counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 04.07.2002 annexed as annexure 5 and further he has prayed to consider the case for providing job under Dying in Harness Rules on compassionate ground.

Briefly stated the father of the petitioner Late Sri Mohd. Ali was working on the post of pipe Fitter under the Garrison Engineer, Dehradun Cantt. Died on 01.02.1993 due to falling of tree within the office premises. At the time of the death of Father of the petitioner he was minor and attained the majority on 02.07.1998. The petitioner has prayed vide letter dated

13.01.1998 for employment as a Mazdoor in place of his father on compassionate ground. According to the petitioner, he had sent many representations to the respondents regularly. On 16.11.2000 the petitioner was called for interview for the post of Mazdoor but 04.07.2002 the case of the petitioner was dropped and he was not recommended by the Board of the officers for appointment on compassionate ground. However, the authorities have rejected the case of the petitioner due to non-availability of sufficient vacancy within 5% quota.

Rule 7 – Determination/Availability of Vacancies of Compassionate Appointment of a Widow/Son/Daughter of deceased Government Servant/ Government Servant retired on Medical Ground has held as under :-

"(a) Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.

(b) Compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The Appointing Authority may hold back up to 5% of vacancies in the aforesaid categories to be filed by direct recruitment through Staff Selection Commission or otherwise, so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz., SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against ST/OBC point and, if he belongs to General Category he

will be adjusted against the vacancy point meant for General category.

(c) *While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad hoc/ contract basis against regular vacancies, there is no bar to considering him for such appointment , if he is eligible as per the normal rules/order governing such appointments.*

(d) *The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g. sports quota vacancy.*

(e) *Employment under the scheme is not confined to the Ministry/Department/office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.*

The Apex Court in the case of **Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468** has held as under :-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If

there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In **Dayal Singh Vs. Union of India and others writ petition No.1458 of 2002 (S/B)** it has been held as under :-

"Therefore, it is quite clear that the authorities concerned after deep consideration come to the conclusion that the appointment should be given to the petitioner under the Dying in Harness Rules.

It is also to be kept in mind since very beginning, the authorities concerned had been considering the case of the petitioner under the Dying in Harness Rules against the fixed quota of 5% as is clear from the record as has been discussed by me in the foregoing paragraph. Sudden rejection of the case of the petitioner by the authorities concerned shows an arbitrariness on their part. In this regard, it would again be relevant to reproduce paragraph 5 of the annexure 22 which is a letter dated 07.08.2002 issued by the Chief Engineer, Bareilly Zone issued to the petitioner which is as follows :

"5. The Board of Officers at Army Headquarters after taking into account each aspect referred to above has considered your case alongwith other candidates. However, due to more deserving cases and few vacancies available, your case was not recommended by the Board Officers for appointment on compassionate ground. In view of this, the competent Authority is of the view that your case does not deserve employment assistance on compassionate grounds."

The decision of the Board Officers at Army Headquarters appears to be without any basis. It has not been made clear that in fact which were more deserving cases then the case of the petitioner. As far as the availability of the vacancy is concerned, it is quite clear from the perusal of the aforesaid paragraph that the

vacancies were available. Therefore, I do not find any justification for rejecting the case of the petitioner unless the authorities concerned had made it clear in the aforesaid letter that who were more deserving candidates than the petitioner be given appointment and it is not made clear as to what was the criteria adopted by them in this regard. As I have already observed in view of the aforesaid letter, it is quite clear that the vacancies were available in the Department against which the petitioner could have been appointed.

The Hon'ble Supreme Court has observed in plethora of decisions that the appointment on compassionate ground can be made if the vacancy is available for that purpose. In the present case, it is not the case of the respondents that the vacancies were not available. Therefore, to my mind that the decision of the respondents in not providing the job to the petitioner under the compassionate ground is arbitrary, harsh and against the settled principle of law."

The respondents are directed to reconsider the case of the petitioner for providing him a job under the Dying in Harness Rules as and when the vacancy exists in the Department.

In view of the aforesaid, the respondents are directed to decide the representation of the petitioner in accordance with law within a period of 6 weeks from the date of production of certified copy of this order.

The order dated 04.07.2002 shall be subject to further order passed after considering the representation of the petitioner.

The writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

24.02.2006
Jain